

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Elizabeth Dietrich,

Plaintiff,

v.

THS Group LLC dba Total Home Protection;
and DOES 1-10, inclusive,

Defendants.

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: Civil Action No.: _____
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COMPLAINT

For this Complaint, the Plaintiff, Elizabeth Dietrich, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. The Plaintiff, Elizabeth Dietrich ("Plaintiff"), is an adult individual residing in Martinsburg, West Virginia, and is a "person" as defined by 47 U.S.C. § 153(39).
4. The Defendant, THS Group LLC dba Total Home Protection ("THS"), is a Pennsylvania business entity with an address of 325 Chestnut Street, Suite 800, Philadelphia, Pennsylvania 19106-2608, and is a "person" as defined by 47 U.S.C. § 153(39).

5. Does 1-10 (the “Agents”) are individual collectors employed by THS and whose identities are currently unknown to the Plaintiff. One or more of the Agents may be joined as parties once their identities are disclosed through discovery.

6. THS at all times acted by and through one or more of the Agents.

FACTS

7. Within the last year, THS contacted Plaintiff by way of text messages sent to Plaintiff’s cellular telephone.

8. At all times mentioned herein, THS contacted Plaintiff on her cellular telephone 240-xxx-0333 using an automated telephone dialing system (“ATDS”) and/or by using artificial messages.

9. Plaintiff never provided her cellular telephone number to THS and never provided her consent to THS to be contacted on her cellular telephone.

10. Moreover, on November 1, 2019, Plaintiff replied to THS’s texts with “STOP”.

11. Nonetheless, THS continued sending automated text messages to Plaintiff’s cellular phone.

COUNT I

VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, ET SEQ.

12. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

13. Without prior express consent, Defendants contacted Plaintiff on her cellular telephone using an automatic telephone dialing system (“ATDS”) and/or by using artificial messages in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

14. Plaintiff never provided express consent to Defendants to send text messages to her cellular telephone number.

15. Moreover, Plaintiff directed Defendants to cease all text messages to her cellular telephone.

16. The messages from Defendants to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

17. Defendants sent text messages to Plaintiff’s cellular telephone knowing that it lacked consent to send text messages to her cellular telephone number. As such, each text message placed to Plaintiff was made in knowing and/or willful violation of the TCPA and is subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

18. Plaintiff is entitled to an award of \$500.00 in statutory damages for each text message in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

19. As a result of each text message made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants as follows:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: January 6, 2019

Respectfully submitted,

By 

Sergei Lemberg, Esq.

Bar #317359

LEMBERG LAW, L.L.C.

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Wilton, CT 06897

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E-mail: slemberg@lemborglaw.com

Attorneys for Plaintiff

CIVIL COVER SHEET

20-154

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Elizabeth Dietrich.

(b) County of Residence of First Listed Plaintiff State of West Virginia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name Address and Telephone Number)
Lemberg Law, LLC
43 Danbury Road
Wilton, Connecticut 06897, (203) 653-2250

DEFENDANTS

THIS Group LLC dba Total Home Protection,
and DOES 1-10, inclusive.

County of Residence of First Listed Defendant County of Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 424 Appeal 28 USC 159	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 425 Appeal 28 USC 160	<input type="checkbox"/> 435 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 440 Commerce	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 426 Appeal 28 USC 161	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 427 Appeal 28 USC 162	<input type="checkbox"/> 436 Patent - New Drug Application	<input type="checkbox"/> 450 Consumer Credit	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 369 Other		<input type="checkbox"/> 428 Appeal 28 USC 163	<input type="checkbox"/> 495 Securities/Commodities/Exchange	<input type="checkbox"/> 429 Appeal 28 USC 164	<input type="checkbox"/> 437 Patent - New Drug Application	<input type="checkbox"/> 460 Commerce	<input type="checkbox"/> 496 Cable/Sat TV
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 430 Appeal 28 USC 165	<input type="checkbox"/> 497 Securities/Commodities/Exchange	<input type="checkbox"/> 431 Appeal 28 USC 166	<input type="checkbox"/> 438 Patent - New Drug Application	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 498 Cable/Sat TV
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 432 Appeal 28 USC 167	<input type="checkbox"/> 499 Securities/Commodities/Exchange	<input type="checkbox"/> 433 Appeal 28 USC 168	<input type="checkbox"/> 439 Patent - New Drug Application	<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 499 Cable/Sat TV
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 434 Appeal 28 USC 169	<input type="checkbox"/> 500 Securities/Commodities/Exchange	<input type="checkbox"/> 435 Appeal 28 USC 170	<input type="checkbox"/> 440 Patent - New Drug Application	<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 499 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 436 Appeal 28 USC 171	<input type="checkbox"/> 501 Securities/Commodities/Exchange	<input type="checkbox"/> 437 Appeal 28 USC 172	<input type="checkbox"/> 441 Patent - New Drug Application	<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 499 Cable/Sat TV
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		<input type="checkbox"/> 670 Other		<input type="checkbox"/> 550 Appeal 28 USC 285	<				

CDJ

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 416 S Illinois Ave, Martinsburg, WV 25401

Address of Defendant: 325 Chestnut St Ste 800, Philadelphia, PA 19106-2608

Place of Accident, Incident or Transaction: Philadelphia County

RELATED CASE, IF ANY:

Case Number _____ Judge _____ Date Terminated _____

Civil cases are deemed related when **Yes** is answered to any of the following questions

- | | | | |
|---|---|------------------------------|--|
| 1 | Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2 | Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3 | Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4 | Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE 01/06/2020

317359

Attorney ID # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1 Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4 Antitrust
- ☐ 5 Patent
- ☐ 6 Labor-Management Relations
- ☐ 7 Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9 Securities Act(s) Cases
- ☒ 10. Social Security Review Cases
- ☒ 11 All other Federal Question Cases (Please specify) Violation of the TCPA

B. Diversity Jurisdiction Cases:

- ☐ 1 Insurance Contract and Other Contracts
- ☐ 2 Airplane Personal Injury
- ☐ 3 Assault, Defamation
- ☐ 4 Marine Personal Injury
- ☐ 5 Motor Vehicle Personal Injury
- ☐ 6 Other Personal Injury (Please specify)
- ☐ 7 Products Liability
- ☐ 8. Products Liability Asbestos
- ☒ 9 All other Diversity Cases (Please specify) Breach of Warranty

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration)

I, _____, counsel of record or pro se plaintiff, do hereby certify

- ☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs
- ☐ Relief other than monetary damages is sought

JAN - 8 2020

DATE _____

Attorney-at-Law / Pro Se Plaintiff

Attorney ID # (if applicable)

NOTE A trial de novo will be a trial by jury only if there has been compliance with F R C P 38

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Elizabeth Dietrich

CIVIL ACTION

v.

20

154

THS GROUP LLC dba Total Home Protection and
DOES 1-10, inclusive

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

01/06/2020

Date

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FAX Number

Plaintiff

Attorney for

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JAN - 8 2020